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**IN THE HON'BLE HIGH COURT OF JUDICATURE**

**AT BOMBAY, GOA BENCH, AT PORVORIM**

**M.C.A. NO 2108 of 2021 (F)**

**In**

**PILWP 25/2021 [F]**

THE GOA FOUNDATION

...**Applicant**

IN

THE GOA FOUNDATION ...**Petitioner**

V/S

THE STATE OF GOA AND ORS ...**Respondents**

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11.10.2021

Advocate for the Applicant

**IN THE HON'BLE HIGH COURT OF JUDICATURE**

**AT BOMBAY, GOA BENCH, AT PORVORIM**

**M.C.A. NO of 2021**

**In**

**PILWP 25/2021 [F]**

**The Goa Foundation,**
A Society registered under the
Societies Registration Act 1860,
through its Secretary, Dr Claude Alvares,
with registered office at Rm.7, Le Brag
Chambers, Mapusa - 403507 Goa.
Email:goafoundation@gmail.com

...APPLICANT

In

**The Goa Foundation,**
A Society registered under the
Societies Registration Act 1860,
through its Secretary, Dr Claude Alvares,
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Chambers, Mapusa - 403507 Goa.
Email:goafoundation@gmail.com

...PETITIONER

V/s

1. **STATE OF GOA,**
through its Chief Secretary,
c/o Secretariat, Porvorim, Goa - 403521.

2. **DIRECTORATE OF MINES & GEOLOGY,**
Through its Director,
Institute Menezes Braganza,
Ground Floor, Panaji, Goa – 403001.

3. **GOA STATE POLLUTION CONTROL BOARD**
Through its Chairman,
Near Pilerne Fire Station,
Opp Saligao Seminary, Saligao, Goa - 403511

4. **THE MINISTRY OF MINES,**
through its Secretary,
Room no 320, A Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road, New Delhi – 110001.

.....**RESPONDENTS**

(Above addresses are registered addresses of parties)

## APPLICATION FOR INTERIM RELIEF

**MAY IT PLEASE YOUR LORDSHIPS**

1. PIL WP No. 25/21 has been filed seeking necessary amendments to the Goa DMF (Trust) Rules, 2018, as certain provisions of the notified Rules appear to be prima facie contrary to the provisions, as well as the objects and purpose of the MMDR Act, 1957. The PIL seeks to ensure effective relief to mining-affected persons and improve the functioning of the DMF, in public interest.

2. Vide order dated 06.09.2021, this Hon'ble Court issued Rule in the matter and granted the Petitioner liberty to take out a separate application seeking interim relief as and when necessary. A copy of the order dated 06.09.2021 is enclosed as **Annexure 1.**

3. One major issue raised in the PIL is the absence in the DMF Rules of monetary contribution required to be made to the DMF from the extraction of minor minerals (river sand, rubble, stones, etc) as mandated by Section 15 A of the MMDR Act, 1957. As per Section 15 A of the MMDR Act, the State Government is empowered to "prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on."

15A.

4. For the past three years now, the extraction of sand from the rivers of Goa has been prohibited owing to excessive extraction legally and illegally, leading to the collapse of river banks and irreversible environmental damage. Hence the question of contribution to be paid from the extraction of sand did not arise as all permits had been cancelled. However, recently, pursuant to a study carried out by the National Institute of Oceanography (NIO) the Goa State Expert Appraisal Committee (GSEAC) has, on 08.09.2021, recommended grant of Environment Clearance (EC) for sand mining activities at seven sites (Chapora, Morjim, Pirna, Ozorim, Agarwada, Camurlim and Revora riverbeds) with a cap of 15 cubic metres per permit, per day, for each location. The relevant extract of the minutes of the meeting of the GSEAC dated 08.09.2021 is enclosed as **Annexure 2.** From the figures cited, GSEAC appears to be talking about allowing extraction of 1.4 million tons of sand annually from locations 1&2, and 0.7 million tons from locations 6&7. So a total of 2.1 million tons annually from one river (worth approximately Rs.602 crore at Rs 3,000 per cubic metre). This is indeed a huge extraction. Once the ECs are granted, the DMG will issue permits for mining of river sand in the above locations. However, in the absence of prescription by the State Govt of the payment to be made to the DMF from the extraction and sale of sand, there will be no monetary contributions to the DMF fund from the extraction of this minor mineral.

This would amount to a violation of Section 15 A of th MMDR Act.

5. It is therefore necessary that this Hon'ble Court urgently consider the petitioner's prayer with regards to the necessity for payment to be determined by the State Government to the DMF from the extraction of sand (minor minerals) from the rivers of Goa and other extractions. Applicant further states that all other States in India have prescribed such payments from the extraction of minor minerals as required by Section 15A of the MMDR Act. Goa is the only exception.

6. Accordingly, the present application seeks a direction to the State Government to prescribe payments by all holders of concessions / leases related to minor minerals of amounts to the District Mineral Foundation. In the interim, the applicant seeks an order restraining the State Government from granting any new licenses for extraction of minor minerals without stipulated payments made by the lessees into the DMF (North and South) as per Section 15A of the MMDR Act.

Relief sought

7. The Applicant submits that the 2015 Amendment to the MMDR Act, inserted the creation of the DMF vide section 9B for major minerals and, section 15 A for minor minerals. The prescription of charges for major minerals has been made by the Central Govt and funds have already accumulated in the DMFs North and South. As per Section 15 A of the MMDR Act, the State Government has to prescribe the procedure for the

deposit of funds into the DMF from the extraction of minor minerals. This has not been done. Instead, the Goa DMF Rules, 2018, totally omit contribution from the minor minerals sector into the DMF Fund. While Rule 12 (d) of the DMF Rules states that the contribution into the fund for extraction of major minerals would be as per the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, no such provision is specified with regard to minor minerals. This is a serious case of omission, and a complete violation of the provisions of the MMDRA.

8. In its affidavit in reply dated 16.04.2021 in the present PIL, the State Government has stated that Section 15A is not mandatory -- relying on the use of the word "may" in Section 15A. Thus, the respondent avers that the State Government has the option/discretion whether or not to implement the DMF with regards to minor minerals.

9. The Applicant disputes the above position for the following reasons:

   a. It is settled law that the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

In *Ashok Lanka v. Rishi Dixit* [2005 (5) SCC 598], the Hon'ble Apex Court has stated:

> "53. The question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression "shall" or "may" by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve."
>
> Further, the Hon'ble SC has stated that "If the object of the enactment will be defeated by holding the same as directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

b. The DMF has been set up with the objective of working for the interest and benefit of persons and areas affected by mining-related operations. The PMKKKY also specifically notes that the DMF is required to ensure that areas and affected persons are benefited by the mineral wealth in their regions and are empowered and entitled to improve their standard of living through their share of these assets. All minerals, major as well as minor, are natural resources that belong to all citizens of the state and under the public trust doctrine, the Government is

merely the trustee of such resources on behalf of the citizens of the state. There is no difference between major and minor minerals in so far as the applicability of the public trust doctrine and the objectives of the DMF are concerned. All persons and areas affected by the mining of minerals must be able to avail the benefit of the DMF fund. While amending the MMDRA, it is evident that the legislature was also cognizant of this fact due to which provisions have been made in the law for the States to also operationalize the DMF for minor minerals. As such, the State has no discretion to not operationalize the DMF for minor minerals, especially when the law clearly provides for and mandates it.

c. It is pertinent to note that the Central Government has also published a "model form" to guide the States on the operation and utilisation of DMF funds. The model form clearly includes contributions from minor minerals into the DMF. Minor minerals are specifically included in the definition of "Contribution" at Clause 1.1(iv), and "Contribution Fund" at Clause 1.1(v) and form part of the "Trust Fund" at Clause 12.(3)(c). The Model DMF Trust Deed published by the Ministry of Mines is enclosed in the PIL at pg 111. In its affidavit dated 16.04.2021 in the present PIL, the DMG states that the DMF Trust Rules have been formulated as per the model forms -- ignoring the fact that the mandatory and important provision regarding contribution from the

extraction of minor minerals has been omitted altogether.

d. The duty of the State Government to make the DMF operational with respect to minor minerals has, in fact, also been informed to the State Governments by letter dated 17.05.2017 by the the Mines Secretary. With regard to the DMF, the letter states that "the MMDR Amendment Act, 2015 brought into existence District Mineral Fund for which the States need to constitute a body at the District level. Section 9 (B) pertains to major minerals while Section 15 (A) of the Act devolves on the States the responsibility to operationalize the DMF for minor minerals as well." A copy of the letter dated 17.05.2017 is enclosed as **Annexure 3**.

e. The notified DMF rules for other states reveal that all provide for contributions from minor minerals. For example, in Chhattisgarh, the required contribution from minor minerals to the DMF Trust is 30 per cent of the royalty, if the lease is not granted through auction (also applies for quarry permits), and 10 per cent of the royalty if the lease is granted through auction. A document disclosing the status of DMF funds in the different States, (uploaded by the Ministry of Mines upto September, 2020) reveals that all the States, except Goa, have made provisions for contributions from both, major as well as minor minerals, and thus, have greater contributions poured

into the DMF. A copy of the document is enclosed as **Annexure 4**. Goa is the only State that has not operationalized the DMF for minor minerals thus far.

f. It is well known that the extraction of sand from the rivers of Goa has severe and drastic environmental consequences. River banks have collapsed in several places due to illegal sand mining, coconut trees on the banks have fallen into the river as the ground under them has slipped away, peoples' homes close to the rivers have also been washed away in some cases. It is for this reason that the Hon'ble Court has been strenuously monitoring the illegal sand mining that still continues in the State in certain places and has issued stringent directions including posting of police personnel at some sites to thwart illegal sand mining. The DMF has been set up particularly to provide relief and rehabilitation to both areas and people affected by the extraction of major as well as minor minerals. Once sand mining is legally permitted, it is important that the sand miners are made to contribute to the DMF so as to take care of adverse effects that may occur in the rivers as well as to the nearby inhabitants. There is simply no reason why the DMF should be deprived of payments from the extraction of minor minerals, especially when these fetch a handsome price in the market.

10. The State Government has taken the view that fixing of charges for minor minerals is optional and has apparently decided not to fix the rates payable in the DMF Rules. As there was no occasion earlier for the petitioner to press this issue, since no permits were in existence, this Hon'ble Court has not considered this issue till date. However, as permits may be issued in the near future, the applicant prays for necessary directions to be issued to the State Government as sought for by the applicant.

**PRAYER CLAUSE**:

11. Applicants are therefore approaching this Hon'ble High Court with the following prayers:

(i) For a direction to the State Government to prescribe the payments to be made by all holders of concessions / leases for extraction of minor minerals into the District Mineral Foundation as per Section 15 A of the MMDR Act 1957;

(ii) For costs of this application;

(iii) For any other reliefs this Hon'ble Court may be pleased to grant in the matter.

**INTERIM RELIEF**

(iv) Pending hearing and final disposal of this application, for an order directing the State

Government not to grant any new licenses for extraction of minor minerals without prescribing the payments to be made by the holders of concessions / leases for extraction of minor minerals into the DMF (North and South) and without establishing an effective system for collection of the stipulated payments.

**PLACE** –MAPUSA, GOA

**DATE** – 11.10.2021

Advocate for Applicant

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM**

**M.C.A. NO of 2021**

**In**

**PILWP 25/2021 [F]**

THE GOA FOUNDATION

...**Applicant**

IN

THE GOA FOUNDATION ...**Petitioner**

V/S

THE STATE OF GOA AND ORS ...**Respondents**

**AFFIDAVIT IN SUPPORT OF THE APPLICATION**

I, Dr. Claude Alvares, Indian National, Secretary of the Applicant above named, do solemnly state on oath as under:

1. I say that I have filed today the accompanying Miscellaneous Civil Application for the reliefs sought therein.

2. I say that this Miscellaneous Civil Application has been drafted on my instructions. I solemnly declare and say that what has been stated in paragraphs 1, 2, 3, 4(p), 5(p), 6, 7(p), 8, 9(p), and 10(p) is true to the best of my knowledge and what is stated in paragraphs 4(p), 5(p), 7(p), 9(p), 10(p) and 11 are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at Mapusa,
this the 11th day of October 2021 Deponent

Ann. (1) 15

Esha New copy. DMF Rules

# IN THE HIGH COURT OF BOMBAY AT GOA

## PIL WRIT PETITION NO. 25 OF 2021 (F)

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ...PETITIONER

*Versus*

STATE OF GOA, THR. ITS CHIEF SECRETARY AND 3 ORS ...RESPONDENTS

**Ms. Norma Alvares with Ms. Anamika Gode, Advocates** *for the Petitioner.*
**Mr. Devidas J. Pangam, Advocate General with Ms. Maria Correia, Additional Government Advocate** *for Respondent Nos. 1 and 2.*
**Mr. Pavithran A.V. Advocate** *for Respondent No. 3.*
**Mr. Raviraj Chodankar, Central Government Standing Counsel** *for Respondent No. 4.*

**CORAM:** **M. S. SONAK &**
**M. S. JAWALKAR, JJ.**

**DATED:** **6th September 2021**

P.C:

1. Heard the learned Counsel for the parties.

2. We issue Rule and expedite the hearing of Rule.

3. The learned Counsel Ms. Correia, Mr. Pavithran and Mr. Chodankar waive service on Rule on behalf of respective respondent whom they represent.

4. The petitioner is at liberty to take out a separate application seeking interim relief. The same shall be taken in accord with law as and when it is taken out.

M. S. JAWALKAR, J. M. S. SONAK, J.

VA GANKAR
ESHA SAINATH

Ann. (21) 17

Extract

--***--

State Expert Appraisal Committee**Goa State Pollution**

**( Goa )**

**Minutes of SEAC Meeting**

--***--

**Subject:-** 137 th SEAC MEETING.

**Venue:-** 4th Floor, Dempo tower, Patto, Panjim

**From :-** 08 Sep 2021

**To :-** 08 Sep 2021

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227637/2021** File No- **GA/EC/021/2021.** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. **SIA/GA/MIN/227637/2021** dated **03 Sep 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

**PROJECT DETAILS**

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| **S. No.** | **State** | **District** | **Tehsil** | **Village** |
| (1.) | Goa | North Goa | Bardez | Chapora |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
| (1.) | Sand (15/22.17) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
| (1.) | NA | 0 | 6 | | NA | Road | | 0 |

**DELIBERATION IN SEAC**

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

**RECOMMENDATIONS OF SEAC**

The committee's recommendation: **FOR FURTHER CONSIDERATION**

Conclusion

**For further consideration**

and also enclosed as **Annexture-I**

The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227683/2021** File No- **GA/EC/0022/2021** Type- **EC**

INTRODUCTION

The proponent made online application vide proposal no. **SIA/GA/MIN/227683/2021** dated **03 Sep 2021** along with copies of EIA/EMP seeking

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environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category "B" of EIA Notification 2006 and the proposal is appraised at State level.

12:56:43 PM

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## PROJECT DETAILS

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| S. No. | State | District | Tehsil | Village |
| (1.) | Goa | North Goa | Pernem | Morjim |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
| (1.) | Sand (15/24.735) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
| (1.) | NA | 0 | 6 | | NA | Road | | 0 |

## DELIBERATION IN SEAC

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

## RECOMMENDATIONS OF SEAC

The committee's recommendation: **FOR FURTHER CONSIDERATION**

Conclusion

**For further consideration**

and also enclosed as **Annexture-I**

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The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

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Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227709/2021** File No- **GA/EC/0023/2021** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. **SIA/GA/MIN/227709/2021** dated **03 Sep 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

**PROJECT DETAILS**

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| **S. No.** | **State** | **District** | **Tehsil** | **Village** |
| (1.) | Goa | North Goa | Bardez | Pirna |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| **S. No.** | **Project configuration/product details** | **Quantity** | **Unit** | **Other Unit** | **Mode of Transport/Transmission of Product** | **Other Mode of Transport** |
| (1.) | Sand (15/18.581) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **S. No.** | **Item** | **Quantity per annum** | **Unit** | **Other Unit** | **Source** | **Mode of Transport/Transmission of Product** | **Other Mode of Transport** | **Distance of Source from Project Site(Kilometers)** |
| (1.) | NA | 0 | 6 | | NA | Road | | 0 |

**DELIBERATION IN SEAC**

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

## RECOMMENDATIONS OF SEAC

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The committee's recommendation: **FOR FURTHER CONSIDERATION**

**Conclusion**

**For further consideration**

and also enclosed as **Annexture-I**

The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227756/2021** File No- **GA/EC/0024/2021** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. **SIA/GA/MIN/227756/2021** dated **04 Sep 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

**PROJECT DETAILS**

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| **S. No.** | **State** | **District** | **Tehsil** | **Village** |
| (1.) | Goa | North Goa | Pernem | Ozorim |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| **S. No.** | **Project configuration/product details** | **Quantity** | **Unit** | **Other Unit** | **Mode of Transport/Transmission of Product** | **Other Mode of Transport** |
| (1.) | Sand (15/11.165) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details |
|---|

| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
|---|---|---|---|---|---|---|---|---|
| (1.) | NA | 0 | 6 | | NA | Road | | 0 |

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**DELIBERATION IN SEAC**

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

**RECOMMENDATIONS OF SEAC**

The committee's recommendation: **FOR FURTHER CONSIDERATION**

**Conclusion**

**For further consideration**

and also enclosed as **Annexture-I**

The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227877/2021** File No- **GA/EC/0025/2021** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. **SIA/GA/MIN/227877/2021** dated **05 Sep 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

**PROJECT DETAILS**

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| S. No. | State | District | Tehsil | Village |
| (1.) | Goa | North Goa | Pernem | Agarwada |
| (2.) | Madhya Pradesh | Indore | Mhow | Akawi |

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The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
| (1.) | Sand (15 cum per permit per day/21.738) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
| (1.) | NA | 0 | 6 | | NA | Road | | 0 |

**DELIBERATION IN SEAC**

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

**RECOMMENDATIONS OF SEAC**

The committee's recommendation: **FOR FURTHER CONSIDERATION**

**Conclusion**

**For further consideration**

and also enclosed as **Annexture-I**

The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227880/2021** File No- **GA/EC/0026/2021** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. SIA/GA/MIN/227880/2021 dated 05 Sep 2021 along with copies of EIA/EMP seeking 6:43 PM environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

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## PROJECT DETAILS

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| S. No. | State | District | Tehsil | Village |
| (1.) | Goa | North Goa | Bardez | Camurlim |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
| (1.) | Sand (15 cum per permit per day/16.056 Ha.) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
| (1.) | NA | 0 | 9 | NA | NA | Road | | 0 |

## DELIBERATION IN SEAC

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

## RECOMMENDATIONS OF SEAC

The committee's recommendation: **FOR FURTHER CONSIDERATION**

**Conclusion**

For further consideration

and also enclosed as **Annexture-I**

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The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIN/227941/2021** File No- **GA/EC/0027/2021** Type- **EC**

**INTRODUCTION**

The proponent made online application vide proposal no. **SIA/GA/MIN/227941/2021** dated **06 Sep 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. , under Category " " of EIA Notification 2006 and the proposal is appraised at State level.

**PROJECT DETAILS**

The project of M/s **DISTRICT COLLECTOR, NORTH GOA** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| S. No. | State | District | Tehsil | Village |
| (1.) | Goa | North Goa | Bardez | Revora |

The production details / project configuration is as follows :

| Project configuration/product details | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
| (1.) | Sand (15 cum per permit per day/16.388 Ha.) | 375 | 6 | | Road | |

Raw Material Requirement is as follows :

| Raw Material Requirement details | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| S. No. | Item | Quantity per annum | Unit | Other Unit | Source | Mode of Transport/Transmission of Product | Other Mode of Transport | Distance of Source from Project Site(Kilometers) |
| (1.) | NA | 0 | 9 | NA | NA | Road | | 0 |

## DELIBERATION IN SEAC

After detailed deliberations, the committee observed:- **Detailed power point presentation was done bY NIO.**

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## RECOMMENDATIONS OF SEAC

The committee's recommendation: **FOR FURTHER CONSIDERATION**

## Conclusion

**For further consideration**

and also enclosed as **Annexture-I**

The proposal was considered by Expert Appraisal Commiittee in its **137 th SEAC MEETING.** the meeting held during **08 Sep 2021** to **08 Sep 2021** . After detailed deliberation the commiittee recommended for grant of Environment Clearance subject to Specific and General conditions.

Date :- **16 Sep 2021**

(1.) Proposal No. :- **SIA/GA/MIS/198395/2021** File No- **GA/EC/0001/2021** Type- **EC**

## INTRODUCTION

The proponent made online application vide proposal no. **SIA/GA/MIS/198395/2021** dated **01 Apr 2021** along with copies of EIA/EMP seeking environment clearance under the provisions of the EIA Notification, 2006 for the above mentioned project. The proposed project activity is listed at SL.No. **,8(a) Building and Construction projects** , under Category **"B2** " of EIA Notification 2006 and the proposal is appraised at State level.

## PROJECT DETAILS

The project of M/s **GOA CRICKET ASSOCIATION** located in as follows :

| State of the project | | | | |
|---|---|---|---|---|
| S. No. | State | District | Tehsil | Village |
| (1.) | Goa | North Goa | Pernem | Dhargalim |

14. Project configuration/product details

| S. No. | Project configuration/product details | Quantity | Unit | Other Unit | Mode of Transport/Transmission of Product | Other Mode of Transport |
|---|---|---|---|---|---|---|

Minor minerals

Ann. 3

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Ministry of Mines.

**D.O. No.31/2/2016-M-III (Part-II)**
Dated the 18th May, 2017.

You would be aware that the statute for major minerals underwent a paradigm shift due to MMDR Amendment Act, 2015. We have been writing from time to time on some issues where States/UTs need to take measures in line with the changed paradigm. States/UTs also need to appoint nodal officers for each of the activities outlined below.

2. On "minor minerals" we need to bring in a more transparent method of implementation. We had written to the States in this regard vide our letter dt.17/8/2015 at Annexure-I. The action taken thereof may be shared. A copy of your current Minor mineral allocation and administration rules may be sent. Though your State does not have geologically proven "major mineral" reserves, you would be happy to know that for "major minerals", that auctions conducted so far will fetch Rs.85,250/- crores to States of which the additional contribution Rs.67,501/- crores over the licence period.

3. You would be aware that the MMDR Amendment Act, 2015 brought into existence District Mineral Fund for which the States need to constitute a body at the District level. Section 9 (B) pertains to major minerals while Sec.15(A) of the Act devolves on the States the responsibility to operationalise the DMF for minor minerals as well. 2 circulars issued in this behalf on 16.9.2015 along with the scheme of Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) to operationalise the DMF is enclosed for ready reference at Annexure-2 & 3 respectively. In this regard, States may furnish a return on a monthly basis as per Annexure-4. We are also in the process of establishing a portal for PMKKKY which will enable automated monitoring, after some time.

4. To further improve the administration of major minerals, a Mining Tenement System is being put in place which would inter alia contain forest, cadastral, GIS maps, mining plan approval, concession management, integration of Ore Accounting, MSS, DMF, NMET and Star Rating systems. It is expected that the first phase would become operational by November, 2017 and the second phase by April, 2018. To construct this portal, Indian Bureau of Mines has engaged M/s WIPRO and we would expect the States to collaborate in the creation of this portal. The portal will also have Ore Accounting system which could become the feeder to the data required under DMF. Going forward the States may put their minor mineral modules also on this portal. States *may nominate a nodal officer* in this regard for coordination.

..2/-

5. The Mining Surveillance System (MSS) and the Star Rating of Mines for major minerals has already been launched. The MSS as you would know use satellite data to monitor the mining activities and generates automated triggers for inspections of mines, where an irregularity is suspected. Till now, 189 triggers have been verified by States of which 35 cases of illegal cases have been detected. This brings in an impartial and cost effective methodology of monitoring mine. States need to give their consent to the adoption of MSS as it would help them in control of illegal mining including sand.

6. The Star Rating system notifies templates for the miners to fill online with regard rehabilitative measure taken, pollution control, mine closures, etc. The system then generates a Star Rating which can be verified by ground truthing. You may be aware that under MCDR Rules, 2017, major mineral mines are expected to attain 4/5 star rating within a period of 2 years. For the case of minor minerals simpler templates shall be designed. States may give their consent for adoption of the system for minor minerals as well.

7. For the above purpose, we have from time to time been asking States to nominate nodal officers. Some States have already done so while some others have still not completed this activity. We would request the States to nominate their nodal officers for each of these activities in the proforma as at Annexure-5. Monthly reports being asked for as above may be sent to us by the 10th of the following month.

Having joined recently in the Ministry of Mines, I look forward to increased interaction and cooperation going forward.

Yours sincerely,
Sd/-
**(Arun Kumar)**

Mines Secretary

Encl : As above

To

All Principal Secretary (Mines) /Secretary (Mines) and Director (Mines & Geology) of 21 Major Mineral States and 13 Minor Mineral States including UTs.

[Doc. from Ministry of Mines]

# ANNEXURE 4

## DMF Fund Status - upto September 2020

Amount in Crore

| Sr. No. | State | DMF figures as on | Total No. of Districts in State | Total Number of districts in which DMF has been set up | Date of notifing the DMF | | Total amount collected under DMF in respect of Coal & Lignite | Total amount collected under DMF in respect of Major Minerals (Other than Coal & Lignite ) | Total amount collected under DMF in respect of Minor Minerals | Total amount collected under DMF |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | For Major Minerals | For Minor Minerals | | | | |
| 1 | Andhra Pradesh | 30.09.2020 | 13 | 13 | 27.06.2015 | 27.06.2015 | 0.00 | 516.21 | 546.33 | 1062.54 |
| 2 | Chhattisgarh | 30.09.2020 | 28 | 28 | 02.01.2016 | 02.01.2016 | 3114.69 | 2534.90 | 180.90 | 5830.48 |
| 3 | Goa | 31.08.2020 | 2 | 2 | 15.01.2016 | N/A | 0.00 | 204.67 | 0.00 | 204.67 |
| 4 | Gujarat | 30.09.2020 | 33 | 32 | 01.04.2016 | 01.04.2016 | 101.91 | 370.36 | 288.72 | 760.98 |
| 5 | Jharkhand | 30.09.2020 | 24 | 24 | 23.03.2016 | 13.01.2017 | 4359.70 | 1301.61 | 259.30 | 5920.61 |
| 6 | Karnataka | 30.09.2020 | 30 | 30 | 11.01.2016 | 12.08.2016 | 0.00 | 1784.99 | 337.48 | 2122.47 |
| 7 | Maharashtra | 30.09.2020 | 36 | 35 | 01.09.2016 | 01.09.2016 | 1318.62 | 255.19 | 534.86 | 2108.67 |
| 8 | Madhya Pradesh | 30.09.2020 | 51 | 51 | 28.6.2016 | N/A | 2751.02 | 642.05 | 5.72 | 3398.79 |
| 9 | Odisha | 30.09.2020 | 30 | 30 | 18.08.2015 | 18.08.2015 | 2661.15 | 8381.96 | 56.24 | 11099.35 |
| 10 | Rajasthan | 30.09.2020 | 33 | 33 | 31.05.2016 | 31.05.2016 | 67.43 | 3419.40 | 634.47 | 4121.30 |
| 11 | Tamilnadu | 30.09.2020 | 32 | 30 | 19.05.2017 | 19.05.2017 | 288.28 | 264.85 | 162.99 | 716.12 |
| 12 | Telangana | 31.08.2020 | 33 | 32 | 19.1.2016 | 19.1.2016 | 1898.20 | 302.19 | 701.74 | 2902.13 |
| **Sub -Total** | | | **345** | **340** | | | **16560.99** | **19978.40** | **3708.74** | **40248.13** |
| 13 | Assam | 30.09.2020 | 33 | 33 | 26.08.2016 | N/A | 51.25 | 15.85 | 19.03 | 86.13 |
| 14 | Bihar | 31.08.2020 | 38 | 38 | 23.05.2018 | 23.05.2018 | 0.00 | 6.80 | 73.61 | 80.41 |
| 15 | Himachal Pradesh | 30.09.2020 | 12 | 12 | 22.08.2017 | 22.08.2017 | 0.00 | 120.66 | 45.08 | 165.74 |
| 16 | Jammu & Kashmir | 30.09.2020 | 20 | 20 | 11.01.2017 | 11.01.2017 | 0.00 | 20.03 | 11.59 | 31.62 |
| 17 | Kerala | 30.09.2020 | 14 | 14 | 22.05.2018 | 22.05.2018 | 0.00 | 10.40 | 18.83 | 29.23 |
| 18 | Meghalaya | 30.09.2020 | 11 | 6 | 08.12.2017 | 08.12.2017 | 0.00 | 45.82 | 7.34 | 53.15 |
| 19 | Uttarakhand | 30.09.2020 | 13 | 13 | 17.11.2017 | 17.11.2017 | 0.00 | 0.25 | 107.51 | 107.76 |
| 20 | Uttar Pradesh | 30.09.2020 | 75 | 75 | 15.05.2017 | 15.05.2017 | 426.86 | 30.67 | 333.66 | 791.19 |
| 21 | West Bengal | 30.09.2020 | 23 | 22 | 29.07.2017 | 29.07.2017 | 13.71 | 0.02 | 43.74 | 57.48 |
| **Sub-Total** | | | **239** | **233** | | | **491.82** | **250.50** | **660.39** | **1402.72** |
| **Grand Total** | | | **584** | **573** | | | **17052.81** | **20228.90** | **4369.13** | **41650.84** |

**IN THE HIGH COURT OF BOMBAY AT**

**GOA**

Misc. Civil Application No. 2108/2021(filing)

IN

PIL WRIT PETITION NO. 25/2021(filing)

**The Goa Foundation ...Applicant**

**V/s**

**State of Goa &Ors. ...Respondents**

**AFFIDAVIT IN REPLY OF RESPON**

**NO. 2**

I, Mr. Vivek H. P., IAS, major of age, Indian National, the Director of the Directorate of Mines and Geology, i.e. the Respondent No. 2, herein above, having office at Institute Menezes Braganza

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Building, Ground Floor, Panaji-Goa, do hereby on solemn affirmation state on oath as under:

1. I say that I am presently working as the Director of the Directorate of Mines and Geology and I am authorized to file the present Affidavit. I state that I am filing the present affidavit based on the records available with my office and I am able to depose thereto.

2. I state that I have read and understood the contents of the said Misc. Civil Application and I am filing this reply in response thereto. I say that I am conversant with the facts and circumstances of the issues involved in the present Misc. Civil Application. I state that at the moment I am not dealing with each and every averment/contention raised in the said Application, but only with the allegations made as against the Affiants office and the contentions/averments which have not been traversed and/or denied by me may not be taken to

have been admitted by me. I crave leave of this Hon'ble Court to file a detailed Affidavit, if required.

3. I state that I am filing the present Affidavit only for the purpose of opposing the grant of any interim relief in favour of the Applicant. At the outset, I deny each and every averment set out by the Applicant in the said Application, to the extent, the same are inconsistent with the case set out by me herein below.

4. I state that the aforestatedPIL Writ Petition has been filed by the Applicant seeking, amongst others; an order or writ of Mandamus to the State Government to prescribe payments into the DMF (North and South) fromthe extraction of minor minerals as per section 15A of the Mines and Minerals (Development and Regulation) Act, 1957 (*hereinafter referred to as the MMDR Act).*

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5. I am advised to raise the following preliminary objections;

## PRELIMINARY OBJECTIONS

a. At the outset I submit that the Applicant by virtue of the present Application has sought for a direction to the State Government to prescribe the payments to be made by all holders of concessions/leases for extraction of minor minerals into the District Mineral Foundation as per section 15A of the MMDR Act. I therefore submit that the grant of the present relief will amount to grant of the final relief as prayed for by the Applicant in the PIL Writ Petition bearing No. 25/2021(filing). I submit that relief in the nature of final relief cannot be granted at the Interim stage.

b. I submit that the present Application is misconceived as the existence of rules prescribing the payments to be made into the DMF (North and

South) from the extraction of minor minerals under the MMDR Act is not a precondition for the purpose of granting of any new licenses/permits for the extraction of minor minerals.

c. I submit that that the State is not precluded from granting licenses for the extraction of minor minerals merely because as on date no Rules have been framed prescribing the payments to be made by the Holders of such licenses for the extraction of minor minerals. The absence of the rules in this regard does not place an embargo on the implementation of the MMDR Act.

d. I submit that in exercise of powers under Article 226 of the Constitution of India a direction cannot be issued to the Executive to exercise its law-making power.The exercise of such law-making power by the Executive can neither be dictated, supervised nor regulated.

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6. I submit that the said Misc. Civil Application deserves to be dismissed in light of the above preliminary objections alone.

7. With respect to the contents of paragraph No. 1 it is admitted that the said PIL Writ Petition bearing No. 25/2021 has been filed seeking amendment to the Goa DMF (Trust) Rules, 2018. It is however denied that certain provisions of the notified rules are/appear to be prima facie contrary to the provisions and/or the objects and purpose of the MMDR Act. I say that by virtue of the said PIL Writ Petition the Petitioner seeks a direction to the executive to exercise its legislative function in the manner as thought appropriate by the Petitioner/Applicant.

8. With respect to the contents of paragraph No. 3, it is denied that section 15A of the MMDR Act mandates monetary contributions to be made to the DMF from the extraction of minor minerals.

Section 15A of the said Act provides as follows;

*'The State Government **may** prescribe the payment by all holders of concessions **related to minor minerals** of amounts to the District Mineral Foundation of the district in which the mining operations are carried on.'*

9. I therefore submit that the State is vested with the discretion of collecting funds for the District Mineral Foundation in case of minor minerals as well, in the event the State deems it fit to do so.

10. With respect to the contents of paragraph No. 4, I herein reiterate that the presence of rules prescribing the contributions to the DMF fund in case of minor minerals is not a pre-condition for the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals. It is denied that the grant of the permits for mining by the Respondent No. 2, for mining of river sand in the absence of prescription of the payments to be

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made to the DMF from the extraction and sale of sand would amount to violation of section 15A of the MMDR Act. I submit that the Applicant has failed to substantiate how the same would amount to a violation of section 15A of the MMDR Act. I submit that the Applicants contention is based on a misinterpretation of the statutory provisions. I submit that the absence of Rules qua the contributions to be made into the DMF from the extraction of minor minerals does not prevent the State from implementing the provisions of the MMDR Act. It is denied that the total value of the sand that will be extracted would be worth approximately Rs. 602 crore at Rs. 3,000 per cubic meter. It is unknown as to on what basis the Applicant has arrived at the afore stated figure. I say that the extraction of sand will depend on the Environmental Clearance which will be granted.

11. With respect to the contents of paragraph Nos. 5and 6, I submit that the issuance of a direction by a Court of Law, to the executive to exercise its law-making power is not contemplated under Article 226 of the Constitution of India.I humbly submit that a Court of law cannot venture into the sphere which is exclusively within the domain of the Executive. I submit that neither can directions be issued thereby dictating the exercise of powers within the sphere which is exclusively within the domain of the Executive. I submit that functions assigned to the Executive cannot be usurped neither can a supervisory role be exercised over the rule making power of the Executive. I submit that legislative powers can only be exercised by the Legislature or its delegate. It is therefore denied that it is necessary that this Hon'ble Court urgently consider the Applicants prayer with regard to the alleged necessity for payment to be determined by

Mandatory Statutory Provision

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the State Government to the DMF from the extraction of sand from the rivers of Goa and other extractions. I therefore submit that the Applicant is not entitled to the reliefs as prayed for in the present Application.

12. With respect to the contents of paragraph No. 7, the Petitioners interpretation of sections 9B and section 15A of the MMDR Act is denied. I say that in accordance with section 14 of the MMDR Act, the provisions of sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.Therefore, the DMF fund established under section 9B of the MMDR Act is solely for Major minerals. However, by virtue of section 15A of the MMDR Act, the State Government is vested with the discretion of extending the contributions made into the DMF from major minerals to minor minerals as well, in the event the State Government

deems it fit to do so. It is therefore denied that as per section 15A of the MMDR Act, the State Government '***has to***' prescribe the procedure for the deposit of funds into the DMF from the extraction of minor minerals. It is denied that it is a serious case of omission and/or a complete violation of the provision of the MMDR Act. I say that the intention of the Legislature is clear from the afore stated provisions of the MMDR Act. It is therefore clear that discretion is vested in the State Government to make provisions for contributions to the DMF Fund from the extraction of minor minerals. I say that the legislature in its wisdom has incorporated section 14 in the MMDR Act thereby making a clear distinction between major and minor minerals. Further, when it comes to making provisions towards the contributions to be made into the DMF from the extraction of minor minerals the said distinction is further fortified by the use of

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may also used in 9B

the word 'may' in section 15 of the MMDR Act. I say that the plain language of the Statute will have to be overlooked in order to arrive at the interpretation of section 15A of the MMDR Act as proposed by the Applicant.

13. With respect to the contents of paragraph No. 9, the interpretation sought to be canvassed by the Applicant of the provisions of the MMDR Act is denied. It is denied that the object of the enactment will be defeated in the event section 15A of the MMDR Act is given its literal meaning and thereby treated as directory. I say that the Petitioners interpretation is based on a reading of the provisions of section 9B and Section 15A in isolation. I say that the entire MMDR Act, which includes section 14, needs to be read as a whole. I herein reiterate the contents of paragraph No. 12 of the present Affidavit in reply.

14. It is denied that the State has no discretion to decide to either operationalize or not to operationalize the DMF with respect to minor minerals. It is further denied that the operationalization of the DMF for minor minerals is mandated by the law. I submit that the model form merely provides the States guidance for the purpose of framing rules for the operationalization and utilization of the DMF Funds. The said form in no manner over rides the Statutory provisions. The model form includes contributions from minor minerals into the DMF merely in order to guide those states which opt to make provisions for contributions from minor minerals into their respective State DMFs. It is denied that the Model Form makes contributions from minor minerals into the DMF fund mandatory.

15. It is denied that vide the letter dated 17/05/2017 the Mines Secretary has informed the State Governments of their alleged duty to make the

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DMF Funds operational with respect to minor minerals. Be that as it may, I submit that the said letter dated 18/05/2017 does not in any event over ride the Statutory provisions.

16. It is denied that solely due to sand mining the river banks have collapsed in several places and/ or that in several places the coconut trees on the banks of the rivers have fallen into the river, and/or peoples hoses close to the river have been washed away in some cases. It is denied that the extraction of sand from the rivers of Goa have severe and drastic environmental consequences.

17. I deny that the Petitioner is entitled to any of the reliefs prayed for in the present Misc. Civil Application.

18. I say that what is stated by me in paragraphs 1 to 4, 7(part), 9(Part), 10(Part), 12(Part), 13(Part), 14(Part), 15(Part) and 16 of the Affidavit in Reply are true to my knowledge and based on the records

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maintained by my office to which I have access and the contents of paras 5, 6, 7(Part), 8, 9(Part), 10(Part), 11, 12(Part), 13(Part), 14(Part), 15(Part) and 17 of the Affidavit in reply are legal submissions based on legal advice, which I believe to be true.

Solemnly affirmed at Panaji, Goa.

On this 17th day of November, 2021.

Deponent

Identified by: As per
ID Registration no.120
of Directorate of Mines.

17/11/2021
HARSHA R. NAIK
ADVOCATE & NOTARY
STATE OF GOA
PANAJI-GOA 403001
Reg No. 217
Exp.Date 29/01/2025
Serial No:-1158/21

17/11/2021
EXECUTED BEFORE ME
WHICH I ATTEST

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM**

CIVIL APPLICATION NO. 33/2021
In
P.I.L. Writ Petition No. 25 /2021 [F]

THE GOA FOUNDATION ...**Petitioner**

v/s

THE STATE OF GOA AND ORS ...**Respondents**

**REJOINDER AFFIDAVIT OF THE PETITIONER**

I, Dr Claude Alvares, Secretary, the Goa Foundation, petitioner organization abovenamed, do hereby solemnly affirm and submit as under:

1. I am filing this rejoinder in response to the affidavit in reply dated 17.11.2021 filed by the Resp. No. 2 (DMG).

2. At the outset, I deny all the facts and averments in the affidavit dt. 17.11.2021 which are not consistent with the pleadings in the PIL Writ Petition. I also state that I am not replying to each and every statement and averment made in the affidavit and nothing may to be deemed to be admitted unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied and disputed specifically.

3. The present Application seeks a direction to the State Government to prescribe payment into the DMF from the sale of minor minerals as the same is mandated as per the provisions of the MMDRA, specifically Section 15A.

4. The Respondent avers that Section 15 A is merely directory, empowering the State Government to prescribe payments into the DMF from minor minerals but not mandating the same. The Respondent further avers that thus, a mandamus to the Government by this Court would be an overreach of judicial powers and that there is no prerequisite in law for payments to be prescribed into the DMF prior to the grant of permits for sand mining in the State.

5. The respondent's argument is based solely on the basis of the use of the word "may " in Section 15 A. However, as stated in the MCA, it is settled law that the use of the words "may" or "shall" by itself is not decisive. The intent of the legislature and the purpose and objects that the statute seeks to achieve must be considered. The Applicant has provided ample substantiation to show that the intent of the legislature and the object and purpose of the DMF would be defeated unless payments are prescribed into the DMF

for minor minerals as well. Except for a banal denial, there has been no response to the same.

6. With regard to the averments in para 11, the Applicant submits that where a mandatory statutory provision is not being complied with, this Hon'ble Court has the jurisdiction to issue a writ of mandamus to the Government under Article 226 of the constitution.

7. The applicant further submits that illegal sand mining has continued in Goa unabated since 2018. The environmental cost of these illegal activities is immense. The DMF has been set up specifically for such areas and people that are affected by mining of minor and major minerals. As the Government is in the process of granting permits for sand mining it would be appropriate that provisions for contributions into the DMF from the extraction of minor minerals be notified prior to the grant of such permits so as to ensure that contributions are made into the DMF from the very start.

8. The Applicants submit that minerals -- minor and major -- are publicly owned resources and state is merely a trustee. Where the extraction and sale of such resources leads to environmental harm, and provisions are available in law to provide relief to the people and areas affected, it is completely

unjustifiable for the Government to demonstrate such unwillingness and absolve itself of the basic requirements of being a trustee.

Solemnly affirmed this,
the _____ day of November, 2021.

Deponent/Petitioner